

REMARKS

I. Status of Claims

Claims 80-83, 86-87, 90-140, and 142-176 are now pending in this application. Claims 84-85, 88-89, and 141 have been cancelled without prejudice or disclaimer. Claims 80-81, 86-87, 90-103, 106-109, 112-115, 118-121, 124-127, 130-137, 139, 142-143, 146-148, 150-153, 156, 158-161, 165-166, and 176 have been amended. Support for those amendments can be found either in the original claims or in the specification, for example, at page 15, lines 8-11, at page 34, lines 12-19, of the specification as filed. Accordingly, there is written description support for all the claims, as amended. Applicants request that the amendments be entered.

II. Interview Summary

Applicants thank the Examiner for contacting their representative telephonically to clarify the species election on March 2, 2009. That telephonic interview was initiated by the Examiner to discuss issues regarding the Restriction Requirement, and a brief summary of the substance of interview prepared by the Examiner appears on the Interview Summary form. In light of MPEP 713.04 and 812.01, and Applicants' affirmation of the species election made in this paper, it is Applicants' position that no statement of the substance of the interview needs to be additionally filed.

III. Election/Restrictions

The Examiner made the Restriction Requirement of July 21, 2008, final. See Office Action at 2-3. The Examiner withdrew claims 96, 113, and 162-176 "from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention". Applicants do not necessarily agree with the finality of the Restriction and Election of Species Requirement, and continue to reserve the right to present the subject matter disclosed by all non-elected species in this or a later-filed divisional application.

Applicants also note that they inadvertently erred in submitting only a partial list of claims that read on the elected species (isobornyl acrylate and isobutyl acrylate), i.e., claims 80-95, 97-112, and 114-161. Applicants hereby submit that claims 80-165 read on the elected species and request that claims 96, 113, and 162-165 be examined. Applicants apologize for any inconvenience this might cause to the Examiner.

Finally, Applicants respectfully remind the Examiner of the rejoinder procedure of M.P.E.P. § 821.04. The M.P.E.P. requires that "[i]n order to be eligible for rejoinder, a claim to a nonelected invention must depend from or otherwise require all the limitations of an allowable claim." *Id.* Applicants point out that the claims of Groups II-III, which are directed to a multi-compartment kit comprising the liquid cosmetic composition as claimed in claim 80, and a cosmetic process comprising applying the liquid cosmetic composition as claimed in claim 80, respectively, comply with this provision. Therefore, these claims are eligible for rejoinder once the make up composition of claim 80 is found allowable. Accordingly, Applicants respectfully request that all pending claims be examined in this application and allowed.

IV. Information Disclosure Statement

Applicants respectfully request that the Examiner consider and then indicate the consideration of EP 0 295 886. That foreign reference, which is in English, was cited in the Information Disclosure Statement submitted on July 17, 2006. According to the Image File Wrapper for the instant application, a copy of that foreign reference was provided to the Office on July 17, 2006.

V. Specification

The Examiner objects to the specification because there is currently no claim for a priority benefit on the first line of the specification. Office Action at 4-5. The Examiner further suggests a petition under 37 C.F.R. § 1.78(a) to accept an unintentionally delayed benefit claim under 35 U.S.C. § 119(e), 120, 121 and 365(c). Applicants respectfully disagree and traverse this objection for the following reasons.

37 C.F.R. § 1.78(a) set forth particulars required for a benefit claim under 35 U.S.C. § 119(e), 120, 121 and/or 365(c). In particular, 1.78(a) indicates that the later-filed application must contain a reference to the prior-filed application in the first sentence(s) of the specification or in an application data sheet, for a benefit claim under 35 U.S.C. § 119(e), 120, 121 and/or 365(c). However, the instant application is a national stage entry of PCT/FR03/02842. The relationship between the instant application and PCT/FR03/02842 is none of those as described in 35 U.S.C. 119(e), 120, 121 and/or 365(c). As such, 37 C.F.R. 1.78 (a) does not apply herein.

Moreover, both of the oath or declaration and the application transmittal letter for the instant application, as attached, indicate that the instant application is the national stage application of PCT/FR03/02842, and both of the Notice of Acceptance and bibliographic data sheet issued by the Office, as attached, appear to acknowledge that relationship. As such, it is Applicants position that adding a reference to PCT/FR03/02842 is not required by any patent rules, and neither is a petition under 1.78(a). However, solely to expedite prosecution, Applicants have adopted the Examiner's suggested amendment of including the reference to the corresponding PCT/FR03/02842 on the first line of the specification. Accordingly, Applicants respectfully request withdrawal of this objection.

VI. Claim Objections

The Examiner objects to claims 118 and 136 because of the phrases "these monomers" and "such as", respectively. Office Action at 6. Applicants have corrected those informalities to comport with the Examiner's suggestions, and respectfully request withdrawal of the objections.

VII. Claim Rejections - 35 USC § 112 (2nd Paragraph)

Claims 80-95, 97-112, and 114-161 are rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Office Action at 6-8.

A. Specifically, the Examiner alleges that it is not clear to one of ordinary skill in the art whether the limitation “mean gloss at 20 °..” recited in claims 80-81, 150 and 151 and the limitation “mean gloss at 60 °..” recited in claims 152-157 refer to a temperature or an angle. Applicants respectfully disagree. It is Applicants’ position that it is clear to one skilled artisan that the limitation in question refers to an angle. As noticed by the Examiner as well, Applicants define temperature with a unit of °C in corresponding paragraphs of the specification. Furthermore, a skilled artisan should recognize the mean gloss measurement results of the same material may be influenced by the measurement angles, and thus are typically defined at a certain angle. Moreover, the “gloss measurement” section of the specification, as filed, clearly recounts “measuring angles of 20 ° and 60 °”. See lines 13-15, page 64. For the foregoing reasons, Applicants respectfully request that this rejection be withdrawn.

B. In addition, the Examiner indicates that the limitation “...weight of active material, by weight of the polymer” recited in claims 158-159 lacks antecedent basis with respect to the phrase “active material” and it is also not clear what the active material of the polymer is. Applicants have amended both claims to delete the phrase “by weight of active material”, and to recite, in relevant part, “by weight of the at least one non-elastomeric film-forming linear block ethylenic polymer relative to the total weight of the composition.” Applicants believe the rejection to be moot and request that it be withdrawn.

VIII. Claim Rejections - 35 USC § 103

A. Over Mougin

Claims 80-82, 84-87, 89, 90, 93, 103, 104, 144, 145, 160, and 161 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Mougin (U.S. Application Publication No. 2002/0115780) for reasons as set forth at pages 9-12 of the Office Action. Applicants respectfully disagree and traverse.

Mougin discloses that "these block ethylenic copolymers of elastic nature are preferably obtained by controlled free-radical polymerization." See paragraph [0016]. Indeed, the Example 4 referred by the Examiner uses the polymer of Example 2 prepared by controlled free-radical polymerization. See Examples 2 and 4 at page 6 of Mougin. Mougin further teaches that "this type of polymerization is reflected by a control of the mass of the polymers formed and by a low polydispersity index." See paragraph [0020].¹

The triblock copolymer disclosed by Mougin in Example 2 at page 6, appears to have a polydispersity index of 2.21 (M_w/M_n). See paragraph [0143]. As such, Mougin does not teach or suggest a block polymer with a polydispersity index of greater than or equal to 2.5, as claimed in claims 81 and 81, as amended. Furthermore, Mougin is

¹ The low polydispersity index is consistent with the following Wikipedia links:

http://en.wikipedia.org/wiki/Polydispersity_index
under "Effect of Polymerization Mechanism on PDI", (PDI is polydispersity index), it reads"...Living polymerization, a special case of addition polymerization, leads to values very close to 1."

link http://en.wikipedia.org/wiki/Living_polymerization, line 5 reads "Living polymerization in the literature is often called "living" polymerization or controlled polymerization."

silent on the mean gloss of the compositions, and on the nature of the intermediate segment linking the blocks. MPEP 2141.02 (V) indicates that “[o]bviousness cannot be predicated on what is not known at the time an invention is made, even if the inherency of a certain feature is later established. *In re Rijckaert*, 9 F.2d 1531, 28 USPQ2d 1955 (Fed. Cir. 1993). Therefore, Mougin does not render the current claims obvious, and these rejections should be withdrawn.

B. Over Anton in view of Kantner

Claims 80-87, 89-95, 97-140, and 144-161 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Anton in view of Kantner (U.S. Application Publication No. 2002/0076390) for reasons as set forth at pages 13-22 of the Office Action. Applicants respectfully disagree and traverse.

Anton describes a polymer comprising a first repeat unit (first monomer) and a second repeat unit (second monomer). Anton discloses that the polymer may be a block copolymer, without further discussing any particulars regarding the nature of the block copolymer. Although some of the copolymers listed in the table in col. 4, for example, the copolymers in line 50, IIIIIIIBBBBB, and line 58, IIIIIIIBBBBBBMMMMMM, can be considered as linear block polymers, those linear block polymers differ from the instantly claimed linear block polymers. For example, the intermediate segment of the claimed block polymers is a random copolymer, whereas the intermediate segment of Anton’s block polymers (for example, -IIBB-, and -BBMM-) is not a random copolymer. Furthermore, at most, only one of the at least one first block and the at least one second

block of the instantly claimed block polymer has a glass transition temperature of over 40 °C, whereas all of the blocks of Anton's block polymers as listed in the table in col. 4 have a glass transition temperature of over 40 °C. For example, the block polymers in line 50, IIIIIIIIBBBBBB and line 58, IIIIIIIIBBBBBBMMMMMM are derived from repeat units (for example, I, B, and M), when each polymerized to form a homopolymer block, having a glass transition temperature above 40 °C (53°C, 105 °C, and 105°C for blocks IIIIII, BBBBBB, and MMMMM, respectively).

Kantner does not rectify Anton's deficiency. Kantner teaches a copolymer "comprising (i) about 10 to 85 weight percent of (meth)acrylate ester of C4 to C18 straight and/or branched chain alkyl alcohol, (conveniently labeled as a first monomer), (ii) from about 10 to 70 weight percent of (meth)acrylate ester of a saturated or unsaturated cyclic alcohol containing 6 to 20 carbon atoms (conveniently labeled as a second monomer)". Thus, similar to Anton, Kantner teaches copolymers comprising two kinds of monomers, See paragraphs [0010] and [0015]. Unlike Anton, Kantner does not expressly disclose that those polymers may be block polymers. Thus, Kantner does not motivate a skilled artisan to arrive at any block polymers, and certainly does not teach or suggest the block polymer as recited in claims 80 and 81, as amended.

In addition, paragraphs [0017] and [0018] of Kantner suggest that isobutyl acrylate and isobornyl (meth)acrylate could be the first **monomer** and the second **monomer**, respectively, for the making of a copolymer. Kantner does not teach or suggest isobutyl acrylate forms one block and isobornyl (meth)acrylate, the other block. Thus contrary to the Examiner's assertion, Kantner does not teach "that isobornyl (meth)acrylate...is a suitable polymer for one **block** and that isobutyl acrylate...is a

suitable polymer for the other **block**". (Emphasis added). See paragraph 11 at page 14 of the Office Action.

Therefore, Anton and Kantner, whether taken alone or in combination, do not render the current claims obvious. Accordingly, Applicants respectfully request the withdrawal of the obviousness rejection.

C. Over Anton in view of Kantner, and in further view of Raether

Claims 88 and 141-143 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Anton in view of Kantner, and in further view of Raether (U.S. Application No. 2004/0014872) for reasons as set forth at pages 22-23 of the Office Action. Applicants respectfully disagree and traverse.

Claim 88 has been cancelled, thereby rendering the rejection of claim 88 moot.

Raether is a U.S. national stage application publication of PCT/EP01/06707 published as WO 01/96432 in German. Raether has a publication date as January 22, 2004, whereas the instant application has an effective U.S. filing date as September 26, 2003. Raether therefore does not qualify as a prior art under 102/103(a). Assuming arguendo that WO 01/96432, has exactly the same disclosure as Raether and that the publication of WO 01/96432 constitutes prior art under 102/103 (a), WO 01/96432 does not rectify Anton's and Kantner's deficiency. WO 01/96432 teaches a block polymer comprising at least two blocks characterized by different monomer compositions. See paragraph [0017] of Raether. However, WO 01/96432 is silent on Tg for any block.

Thus, similar to both Anton and Kantner, WO 01/96432 does not motivate a skilled artisan to arrive at the block polymer as claimed, in relevant part, wherein “the at least one first block is chosen from:

- a) a block with a Tg of greater than or equal to 40°C,
- b) a block with a Tg of less than or equal to 20°C,
- c) a block with a Tg from greater than 20 to less than 40°C,
and the at least one second block is chosen from a category
a), b) or c) different from the at least one first block

Those three references, whether taken alone or in combination, therefore do not render the current claims obvious. As such, Applicants respectfully request the withdrawal of the obviousness rejection.

D. Over Anton in view of Kantner, and in further view of Galleguillos

Claims 84 and 86 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Anton in view of Kantner as applied to claims 80 and 85, and in further view of Galleguillos (U.S. Patent No. 6,410,005) for reasons as set forth at pages 23-27 of the Office Action. Applicants respectfully disagree and traverse.

Without addressing the merits of the structures 1 and 2 in col. 4 of Galleguillos, and of the Examiner’s position that “the linkage of X-X reads on the instant intermediate block”, see line 7 at page 25 of the Office Action, Applicants respectfully submit that Galleguillos does not rectify Anton’s and Kantner’s deficiency. The intermediate block as claimed, as amended, is “a random copolymer block”, which clearly is distinguished from the linkage X-X. Moreover, Galleguillos describes a branched polymer formed

through a multifunctional monomer X. See col. 1, lines 12-15, and col. 5 lines 2-4, whereas the polymer encompassed by current claims is linear.

Those three references, whether taken alone or in combination, therefore do not render the current claims obvious. As such, Applicants respectfully request the withdrawal of the obviousness rejection.

X. Double Patenting

Claims 80-95, 97-112, and 114-161 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claims of 65-136 of copending Application No, 10/528,698, over claims 78-159 of copending Application No, 10/528,699, over claims of 1-56 of copending Application No, 10/529,264, and over claims of 80-165 of copending Application No, 10/529,266. Office Action at 24-30.

Applicants presently agree with the double patenting rejection and presently plan to file an appropriate terminal disclaimer when allowable subject matter is indicated.

Conclusion

In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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Dated: June 12, 2009

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Attachments:

- 1. Oath or declaration***
- 2. Application transmittal letter***
- 3. Notice of Acceptance***
- 4. Bibliographic data sheet***